

NEW ADDITIONS¹

Crutchfield v. Magnolia Mortgage Company, L.L.C. (Adv. No. 03-1264, Bankr. S.D. Ala. January 28, 2004)

- Defendant sought to join party under Fed. R. Bankr. P. 7019.
- Holding: Common law husband of plaintiff must be joined as a party to suit that alleges defendant is liable to plaintiff for violation of the stay, usury, declaratory judgment, fraud, suppression of material facts, deceit, fraud on the court/abuse of process, conversion, breach of contract, slander of title and equitable subordination. The husband is a co-obligor on the promissory note and mortgages upon which the plaintiff bases her complaint. The case discusses the requirements of Rule 7019.

In re Parker (Case No. 03-13899, Bankr. S.D. Ala. March 3, 2004)

- Plaintiff debtor's motion for a determination that she had an interest in a land sale contract was denied.
- Holding: The debtor and her husband had a land sale contract with Triple S Ventures. The debtor did not make timely payments under the contract and Triple S refused to accept late payments after a notice of termination letter was sent. After receipt of the termination letter, the debtor filed bankruptcy. Triple S had no notice of the bankruptcy due to an incorrect address listing for it. A plan was confirmed that provided for direct payments on the land sale contract. The Court held that the confirmed plan did not bind Triple S due to lack of notice. The Court also discussed the law of land sale contracts and defaults and held the land sale contract had been properly terminated prebankruptcy.

Fidelity and Deposit Company of Maryland v. Pierce (Adv. No. 03-1138, Bankr. S.D. Ala. April 15, 2004)

- Court partially granted and partially denied the plaintiff's summary judgment motion in a dischargeability case under §523(a)(4).
- Holding: Debtor was a guardian of estates of two minors. The minors obtained judgment against her in Probate Court that were paid by the plaintiff's bonding company. The bonding company sought to have the Court rule that the state court judgment was res judicata as to the requirements of §523(a)(4). The Court discussed the requirements and held that res judicata was applicable. As to the intent of a debtor necessary for a "defalcation" while acting in a fiduciary capacity, the Court discussed a split in the circuits and held, like the First, Fifth and Seventh Circuits, that defalcation required proof that "a debtor's actions were so egregious that they come close to the level that would be required to prove fraud, embezzlement or larceny." In re Baylis 313 F.3d 9, 20 (1st Cir. 2002).

¹ The case descriptions and holdings provided in this document are for informational purposes only. They constitute no part of the opinion of this Court.

In re Crutchfield (Case No. 02-12671, Bankr. S.D. Ala. April 21, 2004)

- Debtor objected to the claim of individuals who had a mortgage on her property on the grounds that the mortgage was released. The Court overruled the objection.
- Holding: Plaintiff alleged that AmSouth Bank filed a “Satisfaction of Mortgage” that released the entire Kitchens’ mortgage when, at least in part, it referenced a security agreement between the debtor and the Kitchens. The Court held that, although AmSouth did have the power to release the Kitchens’ mortgage, the satisfaction of mortgage document raised enough questions that a reasonable person looking at the title would have made further inquiry and discovered that the document did not release the Kitchens’ mortgage.

Thigpen v. Matrix Financial Services Corp. (Adv. No. 04-1035, S.D. Ala. May 25, 2004)

- The Court denied the motion for stay.
- Holding: The Court held that the creditor may have a right to a jury trial in the case and thus withdrawal of reference might be appropriate; however, discovery should proceed no matter which court might end up trying the case.

Thigpen v. Matrix Financial Services Corp. (Adv. No. 04-1035, S.D. Ala. May 25, 2004)

Brannan v. Wells Fargo Home Mortgage (Adv. No. 04-1037, S.D. Ala. May 25, 2004)

Bowman v. Bank One National Association (Adv. No. 04-1038, S.D. Ala. May 25, 2004)

- The Court denied the creditors’ motions to dismiss under Fed. R. Bankr. P. 7012(b)(6) holding that the debtors did state a cause of cause for improper notarization and for abuse of process.
- Holding: These cases, although against different defendants, seek the same relief. Debtors, who seek to certify a class, assert that each creditor filed affidavits in numerous bankruptcy cases in which the signature page and notarization were executed separate and apart from the rest of the document. The Court held that, assuming the allegations are true, the defendants may have committed a common law tort of improper notarization and/or have abused the bankruptcy process and be liable for sanctions under 11 U.S.C. §105.